



Education Tribunal for Wales

Appeal case statement guidance for respondents

About this guide

This booklet provides helpful information about preparing case statements in response to appeals to the Education Tribunal for Wales (ETW).

We cannot cover everything that would be useful for every appeal. Depending on the nature of the appeal, you may not need to send all the information mentioned in this booklet. Please contact ETW if you have any questions about the process.

Tribunal clerks are the staff who process appeals. They answer your letters and telephone calls. They can only answer questions about the administration of your appeal. They cannot give legal advice. This means they cannot give their opinion, or recommend whether you should take a particular action.

Who this guide is for

This guide is for local authorities that are preparing case statements in response to appeals to the Education Tribunal for Wales (ETW).

About ETW

ETW hears and makes decisions on appeals about the additional learning needs of children and young people. You can make appeals against certain decisions made by local authorities and further education institutes if you disagree. ETW is independent of

government and local authorities, and our decisions are legally binding.

Overriding Objective and Obligation to Co-operate

The Tribunal's main intention is to deal with cases fairly and justly. The Tribunal expect all parties to cooperate with each other, and the Tribunal, to progress the appeal. This may include exchanging information and documents with other parties, or cooperating with the Tribunal's requests more generally.

Language Preference

ETW welcomes receiving correspondence and phone calls in Welsh or English. We will respond in Welsh to any correspondence received in Welsh. Corresponding in Welsh will not lead to a delay in our response.

This document is also available in Welsh. Please contact the Tribunal for a Welsh version of this document. You may also submit forms, documents, and make written representations to ETW in Welsh or English.

Information resources

- [The Education Tribunal for Wales Regulations 2021](#)
- [The Additional Learning Needs Code for Wales 2021](#)
- [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018](#)
- [The Additional Learning Needs \(Wales\) Regulations 2021](#)

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1. Introduction and important information

What is a case statement?

An appellant appeals to the Tribunal when they disagree with local authority decisions about a child or young person's ALN. They will explain their reasons, and provide evidence, in a case statement. The local authority's case statement is a response to the appellant's case statement. It is your chance to explain decisions that the appellant disagrees with, and provide evidence to support your position.

You should provide documents, reports, letters, people's views, and anything else that you think supports your case.

Time limits

Once the appellant has submitted their case statement, we will ensure that you have a copy. You will have 4 weeks from receipt of their case statement to submit yours. The Tribunal will provide a notice confirming the deadline date.

If you do not provide your case statement in time, the Tribunal panel may prevent you from taking part in the hearing altogether.

How to submit your case statement

You can submit your case statement by email or by post.

If submitting by email, please:

- include a content list in Word format, noting name of document, its date and its author;
- submit all other documents in PDF format; and
- provide passwords for any locked documents.

If submitting by post, please:

- send copies rather than original documents;
- include a content list, noting name of document, its date and its author;
- do not staple documents; and
- do not add your own page numbers.

The final bundle of papers

If the appellant is not legally represented, you must provide the final bundle of papers too. You must check with the appellant that they agree with it before submitting it to us. Part 3 of this booklet will explain case bundles in more detail.

If the appellant is legally represented, their representative will send their case statement to us. We will then combine your case statement with the appellant's, and produce the final bundle. We will send the bundle to you and the appellant at least 10 working days before the hearing.

You must help the appellant to prepare their case statement by providing copies of any documents they need. If you do not share documents that you hold, the panel may decide you are trying to withhold evidence that is unhelpful to your case. The appellant must also provide you with any documents they hold, for the same reason.

Late written evidence

You can ask the Tribunal panel at the hearing whether they will consider late written evidence. The Tribunal panel will consider your request if:

- the appellant agrees to include the evidence; or
- you can show that the evidence was not, and could not reasonably have been, available before the deadline. You should send this evidence to the Tribunal and the local authority so that it arrives at least 5 working days before the hearing. The panel will still consider the appellant's opinion.

This evidence must also be unlikely to get in the way of the efficient management of the hearing. Long or complicated documents introduced at the hearing could cause difficulties or delays.

The tribunal panel may still accept late written evidence that does not meet these conditions. They will only do so if you can show that there is a serious risk of prejudice if the evidence is not accepted.

The tribunal panel will refuse to accept late written evidence if they think that it would be against the interests of justice.

Please bring 5 copies of any written evidence to an in-person hearing if the tribunal and the appellant did not receive it at least 5 working days before.

Strike out

The local authority can apply for the Tribunal to strike out an appeal, in part or in full. If the Tribunal strikes out the appeal in full, it will bring the case to an end.

The Tribunal will strike out an appeal if it:

- does not conform with the Tribunal's regulations; or
- is not, or is no longer, within the Tribunal's jurisdiction; or
- discloses no reasonable grounds; or
- is an abuse of the Tribunal's process.

You should make any application to strike out an appeal in writing, setting out the grounds, and reasons you're relying on, in full.

Reaching agreement

Discussions between the appellant and the local authority often continue after we have registered an appeal. If you come to any agreements with the appellant before the hearing, it would be helpful if you let the Tribunal know.

2. What to include in the case statement

What information is essential?

Before the case statement deadline, the Tribunal regulations state you must submit:

- a copy of the disputed decision;
- a copy of the child or young person's IDP, any documentation attached to or forming part of the IDP and, if available, a copy of the latest review;
- a case statement; and
- all other evidence you wish to rely on which the appellant has not already submitted.

The case statement must:

- include the views of the child or young person on the issues raised in the appeal, or reasons why these views are not included
- be signed by a person the local authority has authorised to sign case statements on its behalf; and
- state whether the local authority intends to oppose the appeal.

If the local authority intends to oppose the appeal, its case statement must state:

- the grounds on which the appeal, or any part of the appeal, is opposed;
- the name and address of its representative and, if available, the representative's telephone number and email address;
- the address where the Tribunal should send documents;
- a summary of the facts relating to the disputed decision;
- the reason or reasons for the disputed decision, if not included in the decision; and
- the steps, if any, already taken to resolve the dispute.

What other information should be included?

Disabilities and learning difficulties

The child or young person's learning difficulties or disabilities are very important to the case. The tribunal panel will want to see all recent relevant expert reports that are available.

The history of the case

The Tribunal's decision will relate to the child or young person's current and future education, but earlier history is also relevant. A brief recent history helps to put the matter in context.

If you provide a recent history, be selective. The Tribunal rarely needs to know about all contact between the local authority and parents. The timing of events affecting the child or young person can be important though. Consider noting the dates of assessments by professionals, when the child or young person started or changed schools, and how long particular types of provision lasted.

The child or young person's progress, or lack of it, is also an important issue. It is often useful to have reports on assessments, progress reports, and recent education plans to show this.

The present position

The Tribunal needs to form an accurate current picture of the child or young person. The matters covered depend on the case, but any information should be up to date and go into detail. Information may include:

- current educational achievements and exam results
- behaviour at school and at home
- latest assessments by professionals
- details of current additional learning provision and, if relevant, non-educational provision; or
- travel arrangements to and from school.

You can say which current arrangements are successful and which are proving to be less effective. If, for any reason, the child or young person is not actually receiving all the provision he or she needs, please give details.

The legal reasons

The local authority's case statement should make clear legal reasons that the local authority relied on in making its decision.

For example, if a child or young person attends a maintained school, they should engage in the activities of the school with all other children, unless:

- the activity is not compatible with their ALP;
- it would affect the education of others; or
- it would be an inefficient use of resources. The LA must decide this.

If a parent disagreed with your decision to exclude a child or young person from an activity, you would need to say which reasons you relied on in making your decision, and explain why it was necessary. You would also need to quote which section of the legislation you are referring to. This example relates to section 52 of the ALNET Act 2018.

LA Policies

The Tribunal will take account of local authority policy if it does not conflict with national guidelines. You should explain why the local authority adopted the policy in the written evidence, or explain at the hearing. The Tribunal will not necessarily approve a decision made in line with policy, but it is important information to consider.

Schools

The Tribunal needs basic evidence about any school you ask it to consider. It needs to know:

- what type of school it is;
- how many pupils are on the roll;
- how many places are provided;
- how many children have special educational needs;
- how big the classes or other teaching groups are; and
- what relevant qualifications and experience the staff have.

You should also note any information directly relevant to the child or young person. Questions to consider include:

- What support do you propose?
- What qualifications and experience do the people providing support have?
- What curriculum and educational programmes will they deliver?
- What arrangements do parents and the school to cooperate on?
- What school subjects or activities does the child or young person find difficult? Are there others they're good at?
- What additional learning provision, or help, are they receiving?
- Who has given help (for example, a teacher, an assistant or a therapist) and for how long?
- If the school has taken them out of the class for small-group or individual teaching, who does that teaching?
- Which subjects are they taught separately in, and what is the aim of the teaching?
- Does the child or young person use any special equipment?
- Do they have any other plans? If they do, please let us have copies. Copies of earlier plans may also be useful.

- What does the school say about the child's progress? Copies of school reports, notes of annual review meetings, and exam results can help us.
- How many pupils are there in the child or young person's class?
- How many adults look after the class?
- If a residential placement is an issue, do educational reasons justify it, and what are they?

Travel to and from school

Although transport is not an educational need, we may need to know:

- what transport you propose;
- how long it will take;
- whether it will be by taxi or public transport;
- whether there will be an escort; and
- the estimated cost.

Education at home

When a child or young person receives an education at home, or anywhere other than school, we need to know the additional learning provision you propose. Please explain why you consider it to be appropriate.

Therapy

If you propose therapy, is it for educational reasons?

What is the nature of the therapy?

Who will deliver it?

What are that person's qualifications?

Where will therapy be delivered and how often?

Monitoring

Who will monitor the child or young person's progress, and how often?

Cost

The cost of provision can be important. We often have to decide whether there would be an inefficient use of resources or unreasonable public spending. When this is likely to be a relevant issue, you should provide detailed figures and full explanations.

3. Putting a bundle together

Responsibilities

If the appellant is legally represented, their representative will send their case statement to us. We will then combine your case statement with the appellant's, and produce the final bundle. We will send the bundle to you and the appellant at least 10 working days before the hearing.

If the appellant is not legally represented, you must prepare the final bundle on their behalf.

Putting a bundle together

A bundle should constitute one PDF file of all documents, and one Word file with an index, detailing the contents of the PDF bundle. The index should detail the type, date, author (including position/profession), and page number for each document.

Where available, a bundle must include:

- a) The appeal application, any amended grounds of appeal and the current Statement (if applicable)
- b) Both parties' Statement of Case
- c) The local authority decision letter
- d) Any requests for changes made by a party.
- e) Tribunal orders and any documents ordered to be filed by the Tribunal
- f) Any relevant correspondence between the parties. Please note, this should not include correspondence about dates of meetings or matters that are not directly relevant to the appeal
- g) Relevant professional reports which have been prepared no longer than three years from the date of the appeal
- h) Annual review reports which are relevant to the issues to be decided by the Tribunal for the last two years
- i) Any assessment report and offer of a place (if applicable) from the proposed educational establishment named in the IDP. If applicable, details of the cost of the placement, and the cost of transport for the child or young person to the placement.
- j) Final working document and /or an agreed list of outstanding issues
- k) Statements of witnesses to be given in evidence

You will need to ensure that all documents are complete, legible, and not duplicated.

For items D to K, there is a page limit of 300 pages. This page limit is not a target and many cases will not need this number of pages. Items A to C are not included in the

300 page limit. This ensures parties to the hearing have the opportunity to put their case in full. If you wish to increase the page limit, you will need to apply to the Tribunal. Your request should contain clear reasons about why it is necessary for the fair hearing of the matter.

Submitting the bundle

Before submitting the bundle to the Tribunal, you should send a draft bundle to the appellant for their consideration. If they do not respond within 5 working days, you may presume that they agree with the bundle.

The bundle is due by no later than 10 working days after your case statement period. If the bundle does not follow these guidelines, the Tribunal will give you 3 days to fix any problems. If you fail to meet the deadline, the Tribunal may prevent you from taking part in proceedings.